

HERBERT S. McCLUNG

IBLA 81-640

Decided June 25, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring three lode mining claims abandoned and void. OR MC 029750 through OR MC 029752.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Herbert S. McClung, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Herbert S. McClung has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), returning notices of location for three lode mining claims, and declaring them abandoned for failure to file the notices with BLM within 90 days after the date of location for each claim as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

The three claims at issue are located in T. 36 S., R. 9 W., Willamette meridian, Josephine County, Oregon. Mining claim OR MC 029750, known as The Golden Eagle claim, was located on March 26, 1978, by William McClung and Robert McClung. Mining claim OR MC 029751, which adjoins The Golden Eagle claim on the west, was located by Rose

Marie French, Richard E. French, and Rick French on May 6, 1978. Mining claim OR MC 029752, which adjoins The Golden Eagle claim on the east, was located by Jack J. Simas and Hazel A. Simas on May 6, 1978. William and Robert McClung are the sons of appellant. No explanation of any relationship between appellant and the other locators is given. Appellant apparently submitted the documents and filing fees for recordation of all three claims to BLM himself.

In his statement of reasons, appellant indicates that BLM appears to have made a mistake with respect to his mining claim named The Golden Eagle and located by Boyd, Doris, Julia, and Herb McClung. He adds:

Location notice was filed Sept. 26-1974. Copy sent to BLM. The assessment work was completed every year up to date.

In March of 1978 my two sons Bob and Bill McClung wanted to go in with me on mine. They filed a mine location and their intentions with the county seat in Grants Pass, Oregon. Then when they took active part in August of 1979, they filed with the BLM your stamp ORMC029750 shows you received this notice on October 24-1979.

He concludes by urging that even if his first notice to BLM has been lost, his sons' filings should be in order. ^{1/}

A notation in the case file indicates that the BLM historical index shows no filings of the claims at issue under other laws.

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

^{1/} There is no information in the record as to the mining claim called The Golden Eagle which appellant claims to have located in 1974. The BLM decision does not apply to any such claim. We note, however, that all mining claims on Federal land are subject to the recordation requirements of section 314 of FLPMA, supra.

Failure to timely file the required document conclusively constitutes abandonment of a mining claim by the owner under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a location notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect and must be returned to the appellant. Larry Lahusen, 48 IBLA 43 (1980); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). Appellant's filings were received by BLM on October 24, 1979, more than a year after the dates of location of the claims. This Board has no authority to accept a late filing or excuse lack of compliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

